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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re K.J., a Person Coming Under the
Juvenile Court Law.

C061474

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

(Super. Ct. No.
JD226142)

Plaintiff and Respondent,

v.

T.J.,

Defendant and Appellant.

The mother appeals from orders at an 18-month review hearing terminating further reunification services and continuing out-of-home placement of the minor. (Welf. & Inst. Code, §§ 366.22, 395; all further statutory references are to the Welfare and Institutions Code.) She contends the trial court erred in finding that reasonable reunification services had been provided and in finding that there was a substantial risk of harm if the minor were returned to the mother's home. With respect to reunification services, the mother contends she was prevented from taking necessary classes because of transportation problems, but she presented no evidence to

support this claim and the record contains evidence she did not try diligently to attend classes. With respect to risk of harm, the mother contends there was no risk in returning the minor to her because the record shows only "one incident" during the period of reunification services where she became angry at the minor. However, this views the evidence in her favor and ignores evidence that she made admissions to the social worker disavowing any interest in working toward remediating the problems leading to dependency. Because the record supports the juvenile court's findings, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Given the limited issues raised on appeal, it is not necessary to recite the entire history of this case.

Juvenile court jurisdiction over the minor, born in 1994, was sustained on November 1, 2007. Jurisdiction was based on evidence the mother abused the minor on July 11, 2007, by tying her wrists with an extension cord and hitting her with a belt and a stick. The minor was taken to the hospital and found to have raised welts consistent with such abuse. The minor feared her mother, who was charged with felony child abuse because of this conduct. Further, the mother left the minor without supervision while the mother was incarcerated.¹ The juvenile court declared the minor a dependent and removed her from the

¹ The father is serving a long prison sentence in Michigan. He did not contest the juvenile court proceedings and is not a party to this appeal.

home. The juvenile court ordered the mother to comply with a case plan, including counseling and parenting education, to be overseen by the Sacramento County Department of Health and Human Services (Department).

The social worker's six-month review report recommended no changes to the current orders. The report stated in part that the mother had been given bus passes to access ordered services. The mother had set up counseling sessions and made good progress. On February 1, 2008, the mother told the social worker "she would begin parenting classes on March 7, 2008." There was no evidence that the mother had been prevented from arranging classes sooner.

At the six-month review hearing on May 8, 2008 (§ 366.21, subd. (e)), the mother presented no evidence of an inability to attend classes, but her counsel argued reasonable services had not been provided because of transportation issues that prevented the mother from attending the specific parenting class recommended. However, the social worker stated on the record that "[t]he mom did bring to my attention a couple weeks ago that the parenting [class] was too far away, and I indicated I would work on trying to find a similar program closer to her house," but the social worker had not yet done so. Although the mother had waited until a couple of weeks before the hearing to raise this claim, the juvenile court was sympathetic and stated "that if parenting wasn't moving along, the Department had the obligation to find out what was going on about the parenting."

The court continued the six-month review hearing so that the social worker could address this issue.

On May 29, 2008, the juvenile court noted receipt of an addendum that morning that "does contain a detailed response to the assertions mother had raised at the last hearing about having requested transportation assistance and not receiving it from the Department."

The addendum referenced by the court detailed the communications with the mother about the parenting classes. Beginning in December 2007 the mother repeatedly said she would start parenting classes soon, but failed to do so, and did not report any transportation problems. On March 17, 2008, the mother told a social worker "that she was almost done with parenting education. There was no mention of a concern with the distance or transportation issues." Finally, on April 14, 2008, the mother said she was having trouble getting home from the class and wanted one closer to her home. The social worker endeavored to find such a class but warned that it might not be for parents of older children.

At the continued six-month hearing, the mother addressed the court and stated she had completed a "parenting book" but needed to take the parenting class. The trial court found return of the child would create a risk to her safety and ordered the mother to continue with the case plan. A 12-month review was set for October 16, 2008.

A 12-month review report filed on September 22, 2008, recommended placing the minor with the mother, based on a

favorable counseling report. The mother still had not completed the parenting class, and the social worker was trying to find one "within commute distance" of the mother's home. But the recommendation was to return the minor to the mother and continue providing services.

On October 16, 2008, the matter was continued for an evidentiary hearing at the request of mother's counsel and the minor's counsel.

On November 7, 2008, the mother's counsel filed a pretrial statement, arguing reasonable services had not been provided. No declarations supported the facts alleged.²

On November 21, 2008, a different social worker filed an addendum to the 12-month report. The child's therapist had reported a "psychologically harmful" counseling session with the minor and the mother, and was concerned about unsupervised visits given the mother's "short temper" and habit of taking "anger out on other people[.]" The social worker tried to make telephone contact with the mother to no avail. The Department now recommended further services to the mother with continued out-of-home placement.

Attached to the addendum was a letter from the therapist, detailing the mother's behavior at a counseling session on October 2, 2008. During the session, the mother became

² "[E]xcept for stipulations or admissions contained therein, the unsworn pleadings of counsel do not constitute evidence." (*Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1090-1091.) Thus, no evidence was presented by the mother.

extraordinarily angry when she learned her daughter—then aged 14—had turned off her mobile phone one night when the mother had tried to reach her. The mother was hostile and sarcastic toward the therapist, and when the therapist tried to maintain open communications during the session, the mother said “repeatedly that she was tired of people telling her what to do and that she refuses to ‘speak softly’ to her daughter.” After the mother left, the minor told the therapist she was afraid of her mother “and does not want reunification right now or continued conjoint sessions at this time.” When the therapist called the mother on October 7, 2008, to discuss the matter, the mother “sounded angry and stated that I did not know what I was doing. She also stated that [the minor] had manipulated the situation again and that soon enough I would ‘find out how [the minor] really is.’”

A minute order continuing the hearing notes that the mother had an appointment on December 9, 2008, to meet with the new social worker.

On December 18, 2008, the 12-month review hearing (§ 366.21, subd. (f)) was held. The mother did not appear and her counsel submitted the matter without presenting any evidence. The court again found return of the child would create a risk of harm, and again ordered the mother to comply with the case plan.

An 18-month review report (§ 366.22) filed on January 12, 2009, recommended termination of further services and permanency planning. In part it states: “The undersigned met with the mother on December 11, 2008. The mother has repeatedly stated

to the undersigned that she does not intend to jump through [any more] hoops and indicates that if her daughter does not want to come home then she is not willing to participate in services any further. The mother suggested the undersigned leave her alone and call her when her daughter was ready to come home. The undersigned [called] the mother on January 6, 2009, [to gather] information for this report. The mother indicated that she had not enrolled in any services or contacted the foster family agency to arrange for visits. The mother further indicated that she had no intention of doing so. The undersigned then inquired about the mother's employment, at which time the mother told the undersigned that she did not think she had to provide any information and hung up."

The 18-month review report also states that the mother had been referred for individual counseling on December 11, 2008, as recommended "by the child's therapist to address the mother's hostility and prepare her for conjoint counseling." But the mother did not attend and told the therapist that unless the counseling would be in-home counseling, "she was not interested in the counseling services."

The 18-month review report also states the mother was referred to parenting classes on August 8, 2007, but did not attend any sessions beyond the orientation session. Although there had been some prior transportation problems, the mother had been rereferred on November 14, 2008, to the specific classes she needed and was told on December 11, 2008, she would

be provided with taxi service, but the mother still did not enroll.

An addendum to the 18-month review report states that the social worker spoke to the mother on March 6, 2009, and learned the mother had attended one counseling session out of four, with two no-shows and one late cancellation. The mother told the social worker that she planned to enroll in the parenting class on March 24, 2009. The mother claimed she needed referral information for anger management groups, but she had received that information in December 2008. The mother had not visited with the minor.

On March 11, 2009, at the 18-month review hearing, which the mother had requested as a contested hearing, the parties instead submitted the matter on the social worker's reports and a brief argument by the mother's counsel. Therefore, once again, the mother presented *no evidence* to support her contentions.

The juvenile court found reasonable services had been provided and return of the minor to the mother would pose a risk of harm to the minor. Reunification services were terminated, and the court ordered out-of-home placement and a permanent plan with the goal of returning the minor to the mother. The mother timely appealed.

DISCUSSION

I. Reasonable Services

The mother contends the juvenile court erred by finding the Department had provided her with reasonable reunification

services. She contends the Department failed "to make appropriate referrals, provide assistance with transportation for parenting training or develop an individualized parenting program[.]" We disagree.

The adequacy of reunification services is judged according to the circumstances of each case. (*In re Edward C.* (1981) 126 Cal.App.3d 193, 205.) The Department must identify the problems that led to loss of custody, design services to remedy those problems, maintain reasonable contact with the parent, and make reasonable efforts to assist the parent when compliance has proved difficult. (See *In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973.)

"The court's finding reasonable reunification services had been offered or provided . . . is subject to review for substantial evidence. [Citations.] We must view the evidence in the light most favorable to the department and indulge all legitimate and reasonable inferences to uphold the order." (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010; see *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

The mother's claim is that although she had been ordered to attend parenting classes, the Department was aware that she had transportation difficulties and dragged its heels in helping her access those classes. She argues, "the social worker here failed to assist with transportation and completely ignored the court's order to create an individualized parenting program if community resources were not available." This argument views

the evidence in favor of the mother, who presented *no evidence* to contradict the social worker's reports.

The mother also claims she "was punished for an acrimonious conjoint therapy session which occurred well after appellant had demonstrated an ability to safely and appropriately parent her child. That appellant expressed frustration with the dependency process is more than understandable given what she was put through." In essence, the mother argues she had no duty to take parenting classes unless they were presented at dates, times, and locations most convenient for her. If, as she claims, she was unable to take time off work to complete her classes, she did not present evidence of that fact in the juvenile court. Nor did she present any evidence of bias or hostility by the social worker.

Viewing the evidence in the appellate record in the light favorable to the juvenile court's findings, we conclude reasonable reunification services were provided in this case.

II. Risk of Harm

The mother contends the juvenile court erred by finding that return of the minor would place the minor at substantial risk of harm. She blames the change of social workers for the reversal of the favorable recommendation, and argues the therapist's claim that she became unreasonably angry at one therapy session is entitled to little weight. She claims this "one incident" did not warrant changing the prior recommendation to return the minor to the mother.

The Department first contends the mother's claim has been forfeited for lack of adequate objection. We disagree. The mother submitted on the social worker's report but did not agree with the recommendations therein. She did not thereby forfeit her ability to challenge the sufficiency of the evidence to support the juvenile court's findings. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589; see *People v. Gallindo* (2006) 142 Cal.App.4th 531, 538 ["A challenge to the sufficiency of evidence is forfeited in the trial court only by failure to file timely notice of appeal"].)

In considering the merits of the mother's claim, we view the evidence in the light most favorable to the juvenile court's findings. (*In re Heather B.* (1992) 9 Cal.App.4th 535, 563 (*Heather B.*)).

Section 366.22, subdivision (a) provides, in part, that at the 18-month review hearing, "The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment."

Generally, "the failure of a parent or guardian to participate regularly in any court-ordered treatment programs is sufficient, in the absence of other evidence, to support a finding that a return to parental custody would create a

substantial risk of detriment to the child. Since court-ordered treatment programs are tailored by the court to remedy the circumstances that required removal of the child from parental custody, it is reasonable to conclude that in the absence of contrary evidence the failure to participate in such programs is sufficient to establish that the circumstances still exist."

(*Heather B.*, *supra*, 9 Cal.App.4th at p. 561.)

The social worker's report showed the mother had not completed her reunification plan requirements, had exploded at the minor's therapist, and recently had told the social worker that she was unwilling to "jump through [any more] hoops" to get her daughter back. This confirms the prior indications in the record that the mother's failure to complete classes was because she had little motivation to do so, not because the Department had been derelict in providing her with reasonable services.

The mother points to *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495 in support of her "one incident" claim, but that case is distinguishable. The parent in that case had substance abuse issues but took "a Tylenol with codeine prescribed for her adult daughter while suffering in bed with a headache[.]" (*Id.* at p. 498.) The court concluded this one lapse in sobriety did not pose a risk of harm for the children in that case: "This incident is significant only if it is viewed as a likely first step in Rita's backslide into more serious drug use. And while such a progression is always possible, there is little (if any) indication that was happening here. Rita did not ignore or minimize the danger. She made no

effort to argue (as some might) that her ingestion of a single prescription pain killer was insignificant. Instead, she discussed the incident with her AA sponsor, the drug testing personnel, and her social worker. Rita was, in other words, quite proactive in addressing the lapse." (*Id.* at p. 506.)

In contrast, the mother here took no steps to address her "lapse" of anger. On December 11, 2008, she told a social worker she was not going to jump through hoops to get her daughter back, and on January 6, 2009, she refused to provide information to the social worker. In October 2008 she told the therapist she did not want people telling her how to parent. She told another therapist that she would not participate in counseling unless the therapist came to her home. Thus, the totality of the record shows the mother has not addressed the issues that led her to beat her child, and she refuses to cooperate fully with the services offered to her.

On this record, we find the evidence supports the juvenile court's conclusion that returning the minor to the mother would place the minor at substantial risk of physical harm.

DISPOSITION

The judgment is affirmed.

We concur: _____ RAYE _____, Acting P. J.

_____ BUTZ _____, J.

_____ CANTIL-SAKAUYE _____, J.